IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.149 OF 2007
IN
SUMMONS FOR JUDGMENT NO.325 OF 2006
IN
SUMMARY SUIT NO.1250 OF 2006

M/s. Jag Amba Syndicate & Ors. .... Appellants
Vs.
M/s. Thakker Money Multipliers
Pvt. Ltd. .... Respondents

Shri I.G. Madnani for the Appellants.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATED: MARCH 28, 2007

P.C:

1. Heard. This appeal arises from the order dated 7-11-2006 passed in Summons for Judgment No.325 of 2006 in Summary Suit No.1250 of 2006. By the impugned order, the learned single Judge has decreed the suit.

2. The challenge to the impugned order is on the ground that once the appellants had mortgaged a property towards the security for repayment of the loan, it was not open for the respondents to try to encash the cheques which were also placed in the hands of the respondents as security for repayment of the loan. Bare perusal of the impugned order discloses that the appellants have failed to establish their contention

that the cheques were placed in the hands of the respondents only as a security for repayment of the loan and not towards the repayment of the loan. As regards the claim about the mortgage of the property, the impugned order apparently discloses and the fact is not disputed that no mortgage deed was executed and registered in accordance with the provisions of law. However, drawing attention to the testimony of the plaintiffs, it is sought to be contended that the fact that the property was under mortgage to the respondents as security for repayment of the loan was not disputed. Even assuming so, merely because the debtor has mortgaged a property as security towards the repayment of the loan, that itself will not prohibit the creditor to encash the cheques which were placed in his hands towards the repayment of the loan. Undisputedly, no written agreement was placed on record disclosing that the cheques were placed in the hands of the respondents merely as a security for repayment of the loan. It is also not the case of the appellants that the appellants have otherwise established their claim that the cheques were handed over to the respondents towards the security for repayment of the loan and the same were not supposed to be encashed by the respondents. In the circumstances, no fault can be found with the impugned order. The findings arrived at are clearly borne out from the records and do not warrant any interference in

appeal. There is absolutely no case made out for interference in the impugned order and, therefore, the appeal is liable to be summarily rejected and is accordingly rejected. No order as to costs.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

sjs/m7a149.7